

# **AGENDA**

## **UTILITIES SERVICE BOARD MEETING**

Indiana University Research Park  
501 North Morton – Room 210  
Bloomington, IN 47404

Tom Swafford, President  
Tim Henke, Vice President  
Richard Eherenman  
Jeff Ehman  
Rachel Tolen  
Samuel Vaught  
John Whikehart  
Tim Mayer, ex-officio  
Tom Micuda, ex-officio

***NOTE: Members of the Utilities Service Board, City of Bloomington Common Council, Monroe County Commissioners, and Monroe County Council have been invited to attend this meeting, and a quorum of each group may be present.***

**August 19, 2005 – 11 A.M.**

### **ENGINEERING SUBCOMMITTEE**

- I. CALL TO ORDER
- II. APPEAL OF DENIAL OF SEWER EXTENSION FOR DONALD L. COWDEN
- III. PETITIONS AND COMMUNICATIONS \*
- IV. ADJOURNMENT

\* Brief public comment will be limited to 5 minutes per person.

**ANDREWS  
HARRELL  
MANN  
CARMIN &  
PARKER** PC

William H. Andrews+\*  
Robert D. Mann+  
Michael L. Carmin  
Angela F. Parker  
Eric P. Slotegraaf\*\*  
Benjamin L. Niehoff

Harold A. Harrell  
Of Counsel

+Certified Civil Mediator  
\*Certified Family Mediator  
\*\*LLM - Taxation

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E-mail

May 18, 2005

RECEIVED  
6/23/05

Mr. Patrick Murphy  
City of Bloomington Utilities Department  
1969 S. Henderson Street  
Bloomington, IN 47401-6567

RE: Request for Sewer Extension  
Our File No.: 3567-375

Dear Mr. Murphy:

Donald L. Cowden appeals the denial of the sewer service extension. The decision to deny the request was communicated by your letter dated May 17, 2005. This appeal is submitted in accordance with Rule 24.4, *Rules, Regulations and Standards of Service*. It is my understanding that this appeal will be heard at the next regularly scheduled meeting of the Utility Services Board.

Very truly yours,

  
Michael L. Carmin

MLC/mjk  
cc: Donald L. Cowden  
238747/3567-375

City of Bloomington



Utilities Department

May 17, 2005

Michael L. Carmin  
Andrews Harrell Mann Carmin & Parker PC  
4000 West 7<sup>th</sup> Street – Ste. 104  
P. O. Box 2639  
Bloomington, Indiana 47401-2639

Dear Mr. Carmin:

This is in response to your request for a wastewater service extension to serve property that is being developed by Don Cowden. This property is located on the north side of Vernal Pike. Such requests are subject to the provisions of the city of Bloomington *Utilities Rules, Regulations and Standards of Service* Section 24. Pursuant to that provision, this property falls within the "Exclusionary Area," therefore, an extension of service can only be approved if the Utilities Director receives a positive recommendation by the Mayor of the City of Bloomington. This recommendation is based upon a determination of the Mayor's Economic Development Director that the project will result in a demonstrable economic or community development benefit. The determination made by the Mayor's Economic Development Director in this case was that "the proposed project does not meet demonstrable economic or community development" criterion for wastewater service extension as required by Section 24.3.1 of the *Rules*. Your request for a wastewater service extension, therefore, is denied.

You may appeal this decision to the Utilities Service Board under the procedure set out in Section 24.4 of the *Rules*.

Sincerely,

Patrick Murphy  
Director

PM:nlw

cc: Mark Kruzan, Mayor  
Vickie Renfrow, Assistant City Attorney  
Tom Micuda, Director of Planning  
Ron Walker, Director of Economic Development  
Enclosure (Section 24 of the *Rules, Regulations, and Standards of Service*)

## Section 24 Growth Policies Plan

24.1 Growth Policies Plan. The Utility will consider the City of Bloomington Growth Policies Plan and the Monroe County Comprehensive Plan, as applicable and as provided in this Rule, in its decisions to extend sanitary sewer service, accept wastewater, or allow connection to an interceptor from proposed development. The Board hereby authorizes the Director of the Utility to make the decision as to whether a request for extension of sanitary sewer service shall be granted. Under no circumstances shall the Utilities' approval of a request for permission to extend sanitary sewer service obligate it to construct or pay for the construction of any sanitary sewer extension or connection to the City's sanitary sewer collection system. All such costs are to be borne by the party requesting the extension or connection.

24.2 Area A – City Planning Jurisdiction. For any service request located within the City's municipal boundaries, as evidenced by the Bloomington Planning Jurisdiction Map located in the City of Bloomington Planning Department (hereinafter "Planning Jurisdiction Map"), the Utility may extend sanitary sewer service, accept wastewater, or allow connection to an interceptor in this area at the Director's discretion. Any connection or extension shall be in compliance with all applicable Federal, State, and local rules and regulations.

For areas located within the City Planning jurisdiction but outside the corporate boundaries, known as the areas intended for annexation (AIFA), as evidenced by the Planning Jurisdiction Map, the Utility may extend sanitary sewer service, accept wastewater, or allow connection to an interceptor only after the Director of the Utility has received:

- 24.2.1 a written finding from the City Planning Director indicating that the proposed request is in compliance with the City of Bloomington Growth Policies Plan, and
- 24.2.2 confirmation that the property owner(s) have waived or agreed to waive the right to remonstrate to annexation and in addition have provided written petition or consent to annexation in the form and within the time frames required by the City Controller and Corporation Counsel.

24.3 Area B – Exclusionary Area. Area B, the Exclusionary Area, shall include all territory outside of Area A as defined herein and as evidenced by the Planning Jurisdiction Map. The Utility shall not grant extensions for sanitary sewer service, acceptance of wastewater, or allow connections to interceptors in this area, except that the Utility may approve such a request upon a positive recommendation by the Mayor of the City of Bloomington. The Mayor's recommendation shall be based upon the recommendations of:

- 24.3.1 The Mayor's Economic Development Director and the City Planning Director, who shall consider whether the request is associated with a demonstrable economic or community development benefit for the City of Bloomington, and who shall give consideration to the general policy and pattern of development set out in the Monroe County Comprehensive Plan.. To that end, the City Plan Commission will establish a

standing subcommittee to consult with the Director on each extension request. The subcommittee shall be limited to three members of the Commission, one of whom must be the Common Council's Commission representative. The remaining members will be chosen by the Commission itself. Additionally, the City Planning Director shall consult with the County Planning Director on each sewer extension request, and

- 24.3.2.1 The Corporation Counsel and the City Controller, who shall advise the Mayor whether the property owner(s) have waived or agreed to waive the right to remonstrate to annexation and in addition have provided written petition or consent to annexation in the form and within the time frames required by the Corporation Counsel and City Controller.

The Utility shall give the Board notice of any such approvals at the next regularly scheduled Board meeting following the decision to approve the extension.

24.4 Procedure for Appeal. Notwithstanding any other provision of these *Rules, Regulations and Standards of Service*, the procedure for appeal of decisions regarding sewer extension requests shall be as follows:

- 24.4.1 The party making the request for sewer service extension may appeal the Director's decision to deny said request to the Board by filing a written appeal with the CBU Director's Office within ten (10) days of receipt of denial of the request. The appeal will be heard at the next regularly scheduled Board meeting for which it can be added to the agenda.
- 24.4.2 Within ten (10) days of the Board's receipt of notice that an extension in the exclusionary area (Area B) has been approved by the Director, any customer of the Utility may file an appeal to reverse that decision. The appeal must be filed in writing at the CBU Director's Office, and the appeal will be heard at the next regularly scheduled Board meeting for which it can be added to the agenda.

24.5 Time Frame for Rule. The above Rule shall be considered interim in nature. Per the City of Bloomington Growth Policies Plan, a series of meetings shall be convened between City and County Planning Directors, the City Utilities Department, and regional utility providers. The purpose of these meetings is to create both sewer service districts as well as non-service areas. Once these determinations have been made, the City shall amend this Rule accordingly. At a minimum, this interim Rule shall be evaluated by the Utility within a two-year time frame.

**A**NDREWS  
**H**ARRELL  
**M**ANN  
**C**ARMIN &  
**P**ARKER PC

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E-mail

February 28, 2005

RECEIVED  
MAR 1 2005

RECEIVED  
MAR - 3 2005

BY: \_\_\_\_\_

Mr. Tom Micuda  
City Planning Department  
401 North Morton Street  
Bloomington, IN 47404

RE: Cowden Sewer Extension Request  
Our File No.: 3567-375

Dear Tom:

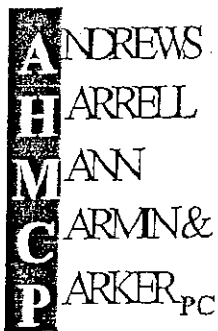
Enclosed please find a copy of my September 2, 2003 letter with regard to Don Cowden's request for extension of the services boundary and sewer connection for land he owns on the north side of Vernal Pike. Since my original letter on this matter in September of 2003, there have been several changes. The ground has been rezoned by the County. I have included a reduced copy of a site plan used as part of the rezoning. As explained in the enclosed letter, Mr. Cowden acquired a 72 acre parcel. Only part of it was subject to the request for rezoning. The rezoning covers approximately 34 acres shown on the site plan as Parcel A. In addition, there were recordable commitments tendered to the County. A copy of the recorded commitments are enclosed. You will note that the commitments included dedicated green space and tree preservation areas. Those are shown as Parcels B and C on the site plan.

If there are any questions or if you require further information, please contact me. Mr. Cowden would like to see this request move forward at the first opportunity. Thank you for your attention.

Very truly yours,

  
Michael L. Carmin

MLC/mjk  
Enclosures  
235316/3567-375



September 2, 2003

Mr. Tom Micuda  
City Planning Department  
401 North Morton Street  
Bloomington, IN 47404

FILE COPY

William H. Andrews+\*  
Harold A. Harrell+  
Robert D. Mann+  
Michael L. Carmin  
Angela F. Parker  
Eric P. Slotegraaf\*\*  
Benjamin L. Nischoff

Re: Cowden Rezoning  
Our File No.: 03567-375

Dear Tom:

You requested additional information with regard to Don Cowden's proposed rezoning and its economic impact.

The proposed rezoning to light industrial for the acreage he owns on Vernal Pike is expected to be similar to the Enterprise Park Development. Enterprise Park also was developed by Mr. Cowden and is located on the south side of Vernal Pike across from the proposed rezoning area.

There are thirteen businesses located in Enterprise Park. It is expected that the area rezoned on the north side of Vernal Pike will hold a few additional businesses. The acreage is comparable but there is some configuration and site development issues for Enterprise Park that restricted the square footage developments that were possible on that site.

Of the thirteen businesses operating in Enterprise Park that were surveyed, three declined to provide any information regarding employees and incomes. Of the ten businesses that did respond, there are a total of 109 employees and the average salary or wages for all employees is \$22,862.39. Using this information, we would project as conservative estimates 160 employees for the proposed rezoning. Because of the time required for development and build out, and allowing for probable increases in income with the passage of time, we project estimated annual income at \$23,800.00.

Mr. Cowden will waive the right to remonstrate against annexation.

Mr. Cowden owns 72 acres. The proposed rezoning covers approximately 32 acres. Of the remaining acreage, some of it is not reasonably developable because of typographical constraints. The remaining acreage is intended to be left agricultural rural reserve for possible future residential development. Mr. Cowden does not propose but is not adverse to the urban services boundary be extended to encompass the entire 72 acre parcel. Because there are no present

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Tim Micuda  
September 2, 2003  
Page 2

development plans for the remaining parcel, there are no present plans to extend sewer to the agricultural rural reserve area. The sewer connections within the industrial park could be and would be designed, if requested, to allow for connection and extension of sewer service to the North. There is no evidence of failure of existing septic systems for the present residences along Woodyard Road north of the proposed rezoning. There is no present interest among those homeowners for sewer extension.

It is probable that Mr. Cowden will not develop the remaining part of the tract. It is possible that he will seek large lot subdivision at some point for residential development, but it is more likely that the ground will remain undeveloped until someone else shows an interest in acquiring the land from Mr. Cowden for further development.

Mr. Cowden's request for extension of the urban services boundary was limited to Parcel B, the proposed rezoning area. The agricultural rural reserve, Parcel A, is not included in this request specifically to avoid concerns that extension of the sewer service would lead to further residential development on Parcel A.

If you have any questions based on this information or require additional information please contact me. Thank you for your assistance in this request.

Very truly yours,

Michael L. Carmin

MLC/ks

cc: Donald Cowden  
211362\03567-375



Pat Haley  
Monroe County Recorder IN  
IN 2004004466 MIS  
03/08/2004 14:12:26 5 PGS  
Filing Fee: \$17.00

**COMMITMENT CONCERNING THE USE AND  
DEVELOPMENT OF REAL ESTATE**

DONALD L. COWDEN (the "Developer") makes the following commitment to the Monroe County Advisory Plan Commission (the "Commission") regarding the use and development of the following described real estate (the "Real Estate"), located in Monroe County, Indiana:

Section 1. Description of Real Estate. See Exhibit A, attached ("Development Real Estate").

Section 2. Case Number. 0308-REZ-18

Section 3. Statement of Commitment.

a. The real estate described on Exhibit B attached, consisting of approximately nine (9) acres, is dedicated for tree preservation and open space.

b. The real estate described in Exhibit C attached, is dedicated as tree preservation and open space, except for location of utilities and storm water drainage and detention facilities.

c. The landscape buffer shall be maintained along the south side of the Development Real by preserving existing trees or the planting of additional trees along the south line adjacent to any real estate used for residential purposes.

d. Any permitted use of the Development Real Estate that is classified as Intensity Use H on the Table of Uses, Monroe County Zoning Ordinance shall be located not less than one hundred (100) feet from any adjacent parcel of real estate zoned for residential use.

e. No all metal buildings shall be erected on the Development Real Estate. Structures erected on the Development Real Estate shall incorporate non-metal accents, consisting of brick, split block, or other masonry materials, cedar or other wood siding comprising more than ten percent (10%) of the exterior of the structure.

f. Outside storage and all trash dumpsters or receptacles shall be screened by privacy fence or landscape buffer.

or landscape buffer.

g. The Development Real Estate will be field-checked for sinkholes prior to any land disturbance activity on the real estate.

**Section 4. Binding Effect.**

a. These commitments are binding upon the Developer, subsequent owners of the Development Real Estate, and each other person acquiring an interest in the Development Real Estate, unless modified or terminated.

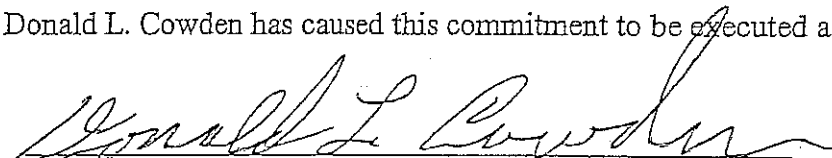
b. These commitments may be modified or terminated only by a decision of the Monroe County Plan Commission upon a public hearing held by the Commission wherein notice has been given as provided by the Commission's rules.

**Section 5. Effective Date.** The commitments contained herein shall be effective upon adoption of an ordinance by the Monroe County Commissioners assigning the requested limited industrial zoning to the Real Estate identified in Case No. 0308-REZ-18

**Section 6. Recording.** The undersigned hereby authorizes the Secretary of the Commission to record these commitments in the Office of the Recorder of Monroe County, Indiana.

**Section 7. Enforcement.** These commitments may be enforced by the Commission.

IN WITNESS WHEREOF, Donald L. Cowden has caused this commitment to be executed as of the 28<sup>th</sup> day of February, 2004.

  
Donald L. Cowden

**DEED REFERENCE:**

Instrument No. 2003006625  
Recorded March 13, 2003

STATE OF INDIANA       )  
                                  ) SS:  
COUNTY OF MONROE     )

Subscribed and sworn to before me, a Notary Public, in and for said county and state, this 28<sup>th</sup> day of February, 2004, at which time Donald L. Cowden personally appeared and acknowledged the execution of the above and foregoing Commitment Concerning the Use and Development of Real Estate to be a voluntary act and deed.

My Commission Expires:  
4-2-07

Kimberly J. Ulland  
Kimberly J. Ulland Notary Public  
A resident of Greene County

This Instrument Prepared By  
MICHAEL L. CARMIN, Attorney at Law  
ANDREWS, HARRELL, MANN, CARMIN & PARKER, P.C.  
400 W. 7<sup>th</sup> Street, Suite 104, P.O. Box 2639  
Bloomington, Indiana 47402-2639  
Telephone: (812) 332-4200

2157763567-375

Exhibit A

A part of the Southwest quarter of Section 30, Township 9 North, Range 1 West, Monroe County, Indiana, more particularly described as follows:

COMMENCING at the Southwest corner of said quarter; thence NORTH 00 degrees 03 minutes 35 seconds EAST, along said quarter section line, 439.00 feet to the Northwest corner of Axsom and the true point of beginning; thence continuing NORTH 00 degrees 03 minutes 35 seconds EAST, along said quarter section line 523.02 feet; thence NORTH 90 degrees 00 minutes 00 seconds EAST, a distance of 872.02 feet; thence SOUTH 03 degrees 53 minutes 23 seconds EAST 162.34 feet; thence SOUTH 80 degrees 59 minutes 19 seconds EAST 453.29 feet; thence NORTH 58 degrees 03 minutes 24 seconds EAST 442.63 feet to the centerline of Woodyard Road; thence SOUTH 56 degrees 00 minutes 00 seconds EAST, along said centerline 170.37 feet; thence SOUTH 45 degrees 30 minutes 00 seconds EAST, along said centerline 421.00 feet; thence SOUTH 00 degrees 00 minutes 00 seconds EAST, a distance of 407.88 feet to the North line of Brummet; thence SOUTH 90 degrees 00 minutes 00 seconds WEST, a distance of 296.46 feet; thence NORTH 00 degrees 00 minutes 00 seconds EAST, a distance of 50.00 feet; thence SOUTH 90 degrees 00 minutes 00 seconds WEST, a distance of 217.00 feet to the Northwest corner of Bush; thence SOUTH 00 degrees 00 minutes 00 seconds WEST, a distance of 265.00 feet to the South line of said quarter; thence NORTH 90 degrees 00 minutes 00 seconds WEST, along said South line, 549.50 feet to the Southeast corner of Cox Trust; thence NORTH 00 degrees 00 minutes 00 seconds EAST, a distance of 215.00 feet; thence NORTH 90 degrees 00 minutes 00 seconds WEST, a distance of 686.50 feet to the East line of Axsom; thence NORTH 00 degrees 00 minutes 00 seconds EAST, a distance of 224.00 feet to the Northeast corner of Axsom; thence NORTH 90 degrees 00 minutes 00 seconds WEST, along the North line of Axsom, 399.00 feet to the point of beginning, containing 34.85 acres, more or less.

#### Exhibit B

A part of the Southwest Quarter of Section 30, Township 9 North, Range 1 West Monroe County, Indiana, more particularly described as follows:

COMMENCING at the Southwest corner of said Section 30; thence NORTH 00 degrees 03 minutes 35 seconds EAST along the West line of said Section 1012.02 feet to the true Point of Beginning; thence continuing NORTH 00 degrees 03 minutes 35 seconds EAST along said West line 310.00 feet; thence leaving said West line NORTH 90 degrees 00 minutes 00 seconds EAST a distance of 109.08 feet; thence NORTH 56 degrees 18 minutes 36 seconds EAST a distance of 324.50 feet; thence NORTH 88 degrees 08 minutes 38 seconds EAST a distance of 340.86 feet; thence SOUTH 00 degrees 00 minutes 00 seconds EAST a distance of 136.18 feet; thence SOUTH 61 degrees 41 minutes 23 seconds EAST a distance of 149.89 feet; thence SOUTH 03 degrees 53 minutes 23 seconds EAST a distance of 294.45 feet; thence NORTH 90 degrees 00 minutes 00 seconds WEST a distance of 872.02 feet to the true Point of Beginning containing 8.197 acres, more or less.

#### Exhibit C

A part of the Southwest Quarter of Section 30, Township 9 North, Range 1 West Monroe County, Indiana, more particularly described as follows:

COMMENCING at the Southwest corner of said Section 30; thence NORTH 00 degrees 03 minutes 35 seconds EAST along the West line of said quarter 439.00 feet to the Northwest corner of Axson; thence NORTH 90 degrees 00 minutes 00 seconds EAST a distance of 399.00 feet to the Northeast corner of Axson; thence SOUTH 00 degrees 00 minutes 00 seconds EAST a distance of 224.00 feet to the Northwest corner of Willibey; thence NORTH 90 degrees 00 minutes 00 seconds EAST along the North line of Willibey, Kahl and Cox 686.50 feet to the Northeast corner of Cox; thence SOUTH 00 degrees 00 minutes 00 seconds EAST along the East line of Cox 215.00 feet to the South line of said Section 30; thence NORTH 90 degrees 00 minutes 00 seconds EAST along the South line of said Section 30 a distance of 549.50 feet to the Southwest corner of Bush; thence NORTH 00 degrees 00 minutes 00 seconds EAST along the East line of Bush 265.00 feet to the Northwest corner of Bush; thence NORTH 90 degrees 00 minutes 00 seconds EAST along the North line of Bush 30.00 feet to the true Point of Beginning; thence NORTH 00 degrees 00 minutes 00 seconds EAST a distance of 264.10 feet; thence NORTH 90 degrees 00 minutes 00 seconds EAST a distance of 483.46 feet to the East line of Cowden; thence SOUTH 00 degrees 00 minutes 00 seconds EAST along Cowden East line 314.10 feet to the North line of Brummetts; thence NORTH 90 degrees 00 minutes 00 seconds WEST along the North line of Brummet and Deckard 296.46 feet; thence NORTH 00 degrees 00 minutes 00 seconds WEST along the East line of Bush 50.00 feet to the Northeast corner of Bush; thence NORTH 90 degrees 00 minutes 00 seconds WEST along Bush North line 187.00 feet to the Point of Beginning containing 3.27 acres, more or less.